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SUPREME COURT, U.S.

NO. 82-5576

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

JEFFREY LEE PICKETT by next friend,
FRANCES ANNETTE PICKETT, and
FRANCES ANNETTE PICKETT,
Appellants,

v.

BRAXTON BROWN,

and

WILLIAM M. LEECH, JR.,
Intervenor-Appellee.

On Appeal From The Supreme Court Of Tennessee

MOTION TO DISMISS OR AFFIRM

WILLIAM M. LEECH, JR.
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STATE OF TENNESSEE

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JEFFREY LEE PICKETT by next friend,
FRANCES ANNETTE PICKETT, and
FRANCES ANNETTE PICKETT, Appellants,

v.

BRAXTON BROWN, Appellee

and

WILLIAM M. LEECH, JR., Intervenor-Appellee.

MOTION TO DISMISS OR AFFIRM

The appellee, William M. Leech, Jr., Attorney General for the State of Tennessee, respectfully moves the Court to dismiss the appeal herein or in the alternative, to affirm the judgment of the Supreme Court of Tennessee on the grounds that the questions presented for review have been clearly ruled upon by this Court and are so unsubstantial as not to need further argument.

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I.

THE STATUTE INVOLVED AND THE NATURE OF THE CASE.

A. The Statute.

This appeal raises the question of the validity of certain provisions of Tennessee Code Annotated § 36-224(2) (Tenn. Pub. Acts 1955, Ch. 186, § 3; 1965, Ch. 36, § 1; Impl. Am. Acts 1975, Ch. 219, § 1).

This statute provides that proceedings to establish paternity shall not be brought after the lapse of more than two (2) years from the birth of the child, unless paternity has been acknowledged by the father in writing or by the furnishing of support. The statute further provides that the Department of Human Services or any person shall be empowered to bring a suit in behalf of any child under the age of eighteen (18) who is, or is liable to become a public charge.

B. The Proceedings Below.

The appellant, Frances Annette Pickett, filed a petition to establish paternity of Jeffrey Lee Pickett (born November 1, 1968) in the Juvenile Court of Memphis in Shelby County, Tennessee on May 12, 1978. The petition to establish paternity was transferred to the Circuit Court of Shelby County on June 6, 1978. On April 30, 1979 the defendant, Braxton Brown, filed a motion to dismiss the cause of action based on the statute of limitations as set forth in Tennessee Code Annotated (T.C.A.) § 36-224(2). The Circuit Court remanded the case to Juvenile Court. In Juvenile Court, plaintiff filed a motion seeking a declaration by the

Court that the two (2)-year statute of limitations relied upon by the defendant was unconstitutional. The Attorney General received notice and intervened to defend the constitutionality of the statute. The Juvenile Court declared unconstitutional the two (2)-year statute of limitations set forth in T.C.A. § 36-224(2). The Juvenile Court authorized the parties to seek an interlocutory appeal and the Supreme Court of Tennessee granted permission to appeal on June 9, 1980.

The appellee, Attorney General William M. Leech, Jr., appealed the decision of the Juvenile Court to the Supreme Court of Tennessee. Appellee contended that the two (2)-year statute of limitation and the public charge exception were substantially related to legitimate state interests. The Supreme Court of Tennessee by decree entered August 30, 1982, upheld the constitutionality of the statute and reversed and dismissed appellant's cause of action.

II.

ARGUMENT

MOTION TO DISMISS

The appellee, Attorney General William M. Leech, Jr., hereby moves to dismiss the appeal on the ground that no substantial federal question is presented; the issues presented in this appeal have been previously settled by this Court.

This Court has previously held that statutory classifications based upon legitimacy which are substantially related to important state interests do not violate

the equal protection clause of the Fourteenth Amendment. Matthews v. Lucas, 427 U.S. 495, 96 S.Ct. 2755, 49 L.Ed.2d 651 (1976); Labine v. Vincent, 401 U.S. 532, 91 S.Ct. 1017, 28 L.Ed.2d 288 (1971); Lalli v. Lalli, 439 U.S. 259, 99 S.Ct. 518, 58 L.Ed.2d 503 (1978); Mills v. Habluetzel, ____ U.S. ____, 102 S.Ct. 1549, 71 L.Ed.2d 770 (1982).

In Pickett v. Brown the Supreme Court of Tennessee upholds the constitutionality of T.C.A. § 36-224(2) which imposes a two (2)-year statute of limitations on paternity actions. The Court finds that the two (2)-year statute of limitations is sufficiently long to present a reasonable opportunity for those who may sue, to assert claims on behalf of illegitimate children. Further, the general two (2)-year limitation, although exceptions are provided where other state interests prevail, is substantially related to the state's interests in avoiding the litigation of stale or fraudulent claims. Pickett v. Brown, 638 S.W.2d 369, 380 (1982).

In reaching this decision the Court states:

> The legislature could rationally determine that two years is long enough for most women to have recovered physically and emotionally, and to be able to assess their and their children's situations logically and realistically. It could rationally decide, on the other hand, that to allow longer than two years would unreasonably increase the putative father's problems of proof in most cases. Its considerations could include the temporary nature of many relationships outside of wedlock; the possibility of the formation of new relationships by the mother, putative father, and anyone else with whom she might have had relations at the relevant time; the difficulty of producing proof to rebut the mother's testimony; the statistics showing the frequency of false and various objective testimony in this type of case; and the fact that, by the time two years have elapsed, the mother theoretically could have had another child.

This analysis is consistent with this Court's most recent opinion in Mills v. Habluetzel, supra.

Appellant contends that the statute violates the equal protection clause and that it denies illegitimate children the right to sue for paternal support.[1] This Court has clearly stated that restrictions upon illegitimates to establish paternity do not necessarily violate principles of equal protection. This Court recognized in Mills, that "in support suits by illegitimate children more than in support suits by legitimate children, the State has an interest in preventing the prosecution of stale or fraudulent claims, and may impose greater restrictions on the former than it imposes on the latter". Mills v. Habluetzel, 102 S.Ct. 1549, 1554 (1982). Further, this Court has consistently stated that its function is not to hypothesize independently on desirability or feasibility of any possible alternatives to statutory schemes. Lalli v. Lalli, supra; Labine v. Vincent, supra.

Appellant further challenges the constitutionality of T.C.A. § 36-224(2) by alleging that the statute unconstitutionally denies illegitimate children who do not receive welfare or the right to sue for paternal support while imposing no such restriction on illegitimate children who receive welfare. Appellee submits that this statutory provision is a valid legislative classification rationally related to the State's interest in reducing the number of people on welfare. The Supreme Court of Tennessee recognized this interest as a rational basis for the legislative classification in upholding the constitutionality of the statute. Pickett v. Brown, 638 S.W.2d 369, 380 (1982).

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[1] T.C.A. § 36-224(2) does not deny illegitimates the right to sue for support. Rather, said statute merely cuts off the time within which paternity may be established.

The statutory classifications expressed in the Tennessee statute are rationally related to legitimate state purposes. The purposes articulated by the State Supreme Court have been recognized by this Court as valid. Accordingly, this appeal presents no substantial federal question and should be dismissed.

MOTION TO AFFIRM

Alternatively, the appellee moves to affirm the judgment of the Supreme Court of Tennessee. The analysis and conclusions of the Tennessee Supreme Court are consistent with this Court's most recent opinion regarding the rights of illegitimate children to sue for support and warrant an affirmance by this Court.

In Mills this Court held that states may impose greater restrictions in support suits by illegitimates than in support suits by legitimate children when such restrictions are substantially related to important state interests. Mills v. Habluetzel, supra. The equal protection analysis as articulated in Mills focused on two related requirements: 1) the period for obtaining support must be sufficiently long in duration to present a reasonable opportunity for those with an interest in such children to assert claims on their behalf and 2) the time limitation placed on the opportunity must be substantially related to the State's interest in avoiding the litigation of stale or fraudulent claims.

The statutory provision which is drawn in question on this appeal imposes a two (2)-year statute of limitations in paternity actions. The statute provides an exception for actions against men who have acknowledged their children in writing or by supporting them to avoid hardship in certain

predictable cases. Further, the statute provides an exception to the two (2)-year statute of limitations to children who are, or are likely to become public charges.

In Pickett v. Brown the Court held the statutory classifications drawn in the statute are substantially related to the State's interest in avoiding stale and fraudulent claims and its countervailing interest in doing justice and reducing the number of people on welfare. Further, the Court found the two-year restriction is long enough in duration to afford illegitimate children an adequate opportunity to obtain support. Pickett v. Brown, 633 S.W.2d 369, 380 (1982). Additionally, in reaching this decision the Tennessee Court considered other provisions of the statute which avoid practical obstacles to filing suit within two (2) years. Pickett v. Brown, supra.

The statutory provision challenged on this appeal has been upheld by the Tennessee Supreme Court based upon the analysis articulated by this Court in Mills. Under this analysis the statute survives equal protection scrutiny and therefore should be affirmed.

CONCLUSION

Wherefore, Appellee respectfully submits that the questions upon which this cause depend are so unsubstantial as not to need further argument, and Appellee respectfully moves the Court to dismiss this appeal or, in the alternative, to affirm the judgment entered in the cause by the Supreme Court of Tennessee.

Respectfully submitted,

WILLIAM M. LEECH, JR.
Attorney General

MICHAEL E. TERRY
Deputy Attorney General

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Dismiss or Affirm has been forwarded by first-class mail to Mr. Harold W. Horne, HORNE & PEPPEL, 474 S. Perkins, Extended, Suite 205, Memphis, Tennessee 38117, this 17th day of November, 1982.

SUSAN SHORT-KELLY
Assistant Attorney General

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October Term of 1982

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AFFIDAVIT OF MICHAEL E. TERRY,
COUNSEL FOR INTERVENOR-APPELLEE

I, Michael E. Terry, being first duly sworn according to law depose and say:

1. That on November 17, 1982, appellee's motion to dismiss or affirm was mailed in a United States Post Office with first-class postage pre-paid and properly addressed to the Clerk of this Court within the time allowed for filing.

2. That the aforesaid motion has been mailed in accordance with the Rules of this Court.

Further affiant saith not.

Michael E. Terry
MICHAEL E. TERRY
Deputy Attorney General

Sworn to and subscribed
before me this 17th
day of November, 1982.

Janet Wright-Lloyd
NOTARY PUBLIC

My Commission Expires:
October 15, 1983